CITY OF FAIRFIELD

RESOLUTION NO. 2016 - 51

RESOLUTION OF THE CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A CONSULTANT SERVICES AGREEMENT BETWEEN THE CITY OF FAIRFIELD AND SMART UTILITY SYSTEMS FOR MOBILE UTILITY BILL PAYMENT AND WATER CONSERVATION SERVICES

WHEREAS, the City desires to provide the most modern and convenient processes for bill payment and water conservation information for phones, tablets and other computing devices to its customers, including leak reporting, water usage comparisons from comparable properties and the site's past water use history; and

WHEREAS, Smart Utility Systems provides software that integrates with Northstar, the City's water utility system, and Paymentus, the City's credit card processing vendor; and

WHEREAS, the City has negotiated a significant price reduction to receive software services and continue receiving support services from Smart Utility Systems for a five-year service term.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF FAIRFIELD HEREBY RESOLVES:

Section 1. The City Manager is hereby authorized and directed to execute on behalf of the City of Fairfield that certain agreement for consulting services with Smart Utility Systems for Mobile Utility Bill Payment and Water Conservation Services for an amount not-to-exceed ninety thousand, two hundred fifty dollars ($105,550).

Section 2. The Public Works Director is hereby authorized to execute and administer amendments in an amount not to exceed $10,555.

PASSED AND ADOPTED this 15th day of March 2016, by the following vote:

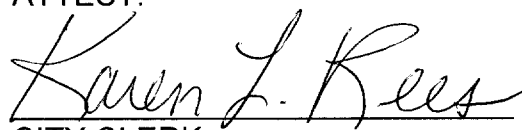AYES: COUNCILMEMBERS: PRICE/TIMM/BERTANI/MOY/VACCARO

NOES: COUNCILMEMBERS: NONE

ABSENT: COUNCILMEMBERS: NONE

ABSTAIN: COUNCILMEMBERS: NONE

_____
MAYOR

ATTEST:

_____
CITY CLERK

pw

<u>CONSULTANT SERVICES AGREEMENT</u>
for Water Conservation and Mobile Bill-Payment Software Services

THIS AGREEMENT is made at Fairfield, California, as of _March 21_, 20_16_, by and between the City of Fairfield, a municipal corporation (the "CITY") and Smart Utility Systems, LLC ("CONSULTANT"), who agree as follows:

1) <u>SERVICES</u>. Subject to the terms and conditions set forth in this Agreement, CONSULTANT shall provide to the CITY the services described in Exhibit "A," which consists of the proposal submitted by CONSULTANT. CONSULTANT shall provide said services at the time, place, and in the manner specified in Exhibit "A."

2) <u>PAYMENT</u>. CITY shall pay CONSULTANT for services rendered pursuant to this Agreement at the times and in the manner set forth in Exhibit "B." The payments specified in Exhibit "B" shall be the only payments to be made to CONSULTANT for services rendered pursuant to this Agreement. CONSULTANT shall submit all billings for said services to the CITY in the manner specified in Exhibit "B."

3) <u>FACILITIES AND EQUIPMENT</u>. CONSULTANT shall, at its sole cost and expense, furnish all facilities and equipment which may be required for furnishing services pursuant to this Agreement.

4) <u>GENERAL PROVISIONS</u>. The general provisions set forth in Exhibit "C" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the provisions set forth in Exhibit "C" shall control.

5) <u>INSURANCE REQUIREMENTS</u>. The insurance requirements set forth in Exhibit "D" are part of this Agreement. In the event of any inconsistency between said general provisions and any other terms or conditions of this Agreement, the requirements set forth in Exhibit "D" shall control.

6) <u>EXHIBITS</u>. All exhibits referred to herein are attached hereto and are by this reference incorporated herein.

7) <u>TERM</u>. This agreement shall be in effect for a period of five (5) years from the date of Deployment as referenced in Exhibit A below; or until the scope of work is completed.

EXECUTED as of the day first above-stated.

City of Fairfield, a municipal corporation

By:_____
          David A. White
          City Manager
CONSULTANT
Smart Utility Systems, LLC

By:_____

EXHIBIT "A"

SCOPE OF SERVICE

Scope of Work

This Statement of Work (SOW) establishes the scope and requirements for the complete implementation of the proposed software for the City of Fairfield (the "City") by Smart Utility Systems/SUS, LLC ("CONSULTANT"). The scope of work includes installation of the following software package ("Software"):

- Smart Customer Mobile (SCM®)
- Smart Mobile Workforce (SMW®)
- Smart Water iQ Analytics (SWiQ™)

The functional scope of the implementation will include the following modules and capabilities of the SUS Software:

Smart Customer Portal and Mobile (SCM®/SCP)

Module	Description
Conservation	Mobile module that allows customers to view their Water Efficiency Score, See Rebates and Savings Tips, and Enroll in Programs. Also display Energy Efficiency and Rebate programs available from Pacific Gas & Electric as setup via admin portal.
Connect Me	This module allows customers to Report Water Waste and Other Violations to Utility and connect with them via Phone or email.
Outage	This module displays Outage notifications sent by the Utility
My Account	View water service account contact information. Ability to update email and phone and add/modify/delete account information. Modify settings specific to email, notifications, texting and outage alerts, opt-in and opt-out.
Usage	Graphs and charts illustrating Water and Electric consumption, historical comparisons, and rate plan. Electric data subject to availability from PG&E through Green Button program.
Compare	This module allows customers the ability to compare usage to themselves, similar properties, average users and other characteristics as defined by Utility.
Notifications	Real time 2-way communication between customer and utility via messages such as outage updates, Utility Alert, Program Recommendations and service requests from Utility pushed via web, email, and text messaging.
Billing	The module provides user the ability to view current and historical bills, pay bill online, set monthly/annual budget goals with alerting email/text features, and see comparison neighborhood ranking.
Service	This module allows customers to raise service requests like Move In, Move Out, Turn On/Off, Meter Accuracy Test, and Service Transfer etc.
Smart Home	Smart Home module provides ability to manage home appliances and devices such as smart thermostats, smart plugs etc.
Electric Vehicle	This module displays the EV charging locations, rates and charging controls and provides charging information about the EV. The module also provides the predictive intelligence and recommends the ideal time to charge the EV and total savings.
Footprint	Footprint module allows customers to view the energy efficient business at the current location of the customer. Customer can also search for energy efficient businesses at other locations using Search functionality.
Administration Portal	The package includes an Administration Portal for Customer Contact Analytics that will be accessible to the Utility Customer Service employees.

Smart Mobile Workforce (SMW®)

Module	Description
Investigation Work Management	• Water Waste and Violation Reports - Create water waste and violation incident report while being in the field on mobile device along with photographic and other evidence • Investigation – Receive investigation work order information, capture evidence, and complete work orders

Smart Water iQ (SWiQ™)

Module	Description
Violations and Reporting	• Identify and track Violations based on customer, and utility fieldworker reports, and meter analysis for investigation, and issue notices to customers.
Conservation Analytics	• Calculate Water Efficiency Score based on customer segment specific benchmarks to compare customers. • Identify High Value Target Customers for conservation programs based on
Leakage Analytics	• Identify leaks and notify customers using real-time AMI meter alerts (if available) and Non-AMI Meter data pattern analysis • Identify customer account and meter data inaccuracies using data pattern analysis • See Usage Patterns correlated with weather, time of use, and property attribute
Flow Analysis	• Define meters to monitor flow into a subsystem or across a set of meters

CONSULTANT's solutions are specific to each customer and are based on what is currently available. CONSULTANT shall notify the CITY of new product releases and versions, and the parties shall thereafter meet to determine whether to incorporate any new functionality for the CITY.

Installation Support and Integration
The CONSULTANT's team will install all listed software modules in the SUS cloud along with integrations with the CITY systems as listed below:
1. Harris North star or Infosend: One of the following two options:
    a. Secure FTP based daily file transfer utilized by Infosend interface
    b. Real-time integration via API for payments and billing, and combination of file based transfer and web services for account updates
2. Usage data: Monthly File transfer based batch process using secure FTP
3. Online Biller/Paymentus: One of the following two options:
    a. Integration with Paymentus for online payments within SCM/SCP
    b. Web redirect to Paymentus interface for payment
4. Bill Presentment via Infosend: API to get PDF bill from eBill/PDF bill provider Infosend.
5. CONSULTANT will integrate the data uploaded via (API) from all meters that are outfitted with Verizon wireless card on a daily basis. Daily read meters are provided by Metron-Farnier with data being uploaded onto a Verizon cloud-based Network.

CONSULTANT will require the CITY's functional and technical resources on as-needed basis to ensure end- to-end system integration and data mapping.

Not in Scope
Any other modules standard to CONSULTANT's products that are not specifically listed in above scope sections. Any enhancement or change to SUS baseline products. Any integrations for data exchange with CITY systems not explicitly listed above.

Project Approach

The scope of work will be completed in the following five phases over a twelve week period (11 week implementation + 1 week testing):

Planning	Design	Configuration	Testing	Deployment

1. Project Kick Off
  a. Kick-off Meeting
  b. ID Customer Stakeholders
2. Application Fit Gap
  a. Application Walkthrough
  b. Integration Planning
3. Deliver Application Walkthrough Doc
	1. Integration Design
	  a. Integration Design
	  b. Access to Test Data
	  c. Database/Table-Data Mapping
	  d. Third party APIs
	2. Configuration and Administrative Setup
	  a. Data Request Delivered
		1. Infrastructure Setup / Ready
		2. Module Configuration
		  a. Configure Test Data
		  b. Customer Portal and Mobile Configuration
		  c. Utility Analytics (WiQ) platform Configuration
		  d. SMW Configuration
		4. Integration with Customer Data and Access
			1. Functional/ Integration Testing complete for all configurations
			2. User Acceptance Test (UAT)
			  a. UAT Scripts complete
			  b. Full end user case test for 10 customer accounts
			  c. UAT complete
			3. Document End User Guide
			4. Training
			  a. Application Walkthrough session
				1. Execute Go Live Plan
				2. Production Verification Test
				3. Production Live
				4. Deliver User Guide

Deliverables

The following deliverables will be provided:

Deliverable	Description
Application Walkthrough Document	The Application Walkthrough Doc will summarize the standard product specifications incorporated into the software package for this implementation.
Weekly Project Status Report	CONSULTANT will provide weekly updates to the CITY on the overall status of the project. This report will include the details of the tasks accomplished for the current week, planned for next week, any changes to scope and risks involved, if any.
User Acceptance Test (UAT) Scripts	CONSULTANT will be responsible to provide the CITY the detailed User Acceptance Test scripts which the CITY personnel can utilize to validate the functionality per the requirements.
End User Guide	CONSULTANT will provide user manuals for the in-scope Software projects. These user guides will help the CITY's customers to easily understand the workflow and functionality of each module.

Escalation

CONSULTANT will escalate issues in the following order, if they remain unresolved at the previous level.

Level	Unresolved for	E-mail Id
Shashi Ganjam	1 Day	sganjam@fairfield.ca.gov
Steve Garrison	3 Days	sgarrison@fairfield.ca.gov

The CONSULTANT team will escalate issues in the following order, if they remain unresolved at the previous level.

Level	Unresolved for	E-mail Id
Travis Parker – Director, Solutions Delivery	1 Day	Travis.Parker@smartusys.com
Brad Adamske – Sales Director, SUS	3 Days	Brad.Adamske@smartusys.com

User Acceptance Test (UAT)

The following process will be followed as part of User Acceptance Testing:

    a. CONSULTANT will provide User Acceptance Test scripts for the CITY to test the system.

    b. The scope of UAT will include full functionality of the application with live data and ten active user accounts.

    c. CITY users will carry out UAT using the scripts. Based on the outcome, CONSULTANT will seek sign-off on UAT phase.

    d. Once signed-off, CONSULTANT will proceed with final deployment for go-live.

Change Control

The following process will be followed if a change to this Statement of Work or project plan is required:

    a. A Project Change Request ("PCR") will be the vehicle for communicating change. The PCR must describe the change, the rationale for the change and the effect the change will have on the Project. Additionally, the PCR must also provide a recap of the original estimated resources and costs, revised estimated resources and costs and associated cost savings or expenditures.

    b. The designated Project Manager of the requesting party will review the proposed change and determine whether to submit the request to the other party.

    c. Both Project Managers will review the proposed change and agree to take steps to implement it, recommend it for further investigation, or reject it.

    d. CONSULTANT and the CITY will specify any changes to the fees based on the time and material estimate provided by CONSULTANT and the hourly rate agreed upon in this SOW for such investigation. A Change Order must be signed by authorized representatives from both parties in order to revise this Statement of Work.

Risks and Assumptions

The following assumptions have been made:

    a. CITY will provide a response to reasonable CONSULTANT information needs and any needed review of project-relevant documents within two (2) Fairfield City business days.

    b. Key personnel at CITY that are designated as such by CITY will be made available to CONSULTANT as required during the Project Phases.

    c. All documents will be jointly reviewed with CITY staff prior to submission by CONSULTANT for formal acceptance by CITY.

    d. CITY data will be provided to CONSULTANT for products integration before start of Configuration Phase. The configuration phase requires necessary datasets for module configuration. These data sets will be provided in a flat file format sent and captured through SFTP protocol.

    e. The Scope of Work is binding if authorized, and any changes to the Scope of Work must be made and agreed to in writing by CONSULTANT and CITY.

    f. CITY fully acknowledges and understands that any customization to standard features and functionality as described in this Statement of Work will be assessed by CONSULTANT and may impact any approved budget and/or schedule. CITY will have sole discretion to determine whether to proceed with such customizations.

    g. Mobile application shall be made available for download on iOS and Android platforms.

Software Maintenance and Technical Support

All relevant Software Maintenance and Technical Support matters, if applicable, shall be governed by CONSULTANT's standard Software Maintenance and Technical Support Agreement, attached hereto and incorporated as Exhibit G below.

Software Licensing

The terms of licensing and use of the CONSULTANT's intellectual property including the SCM®/SCP, SMW®, and SWiQ™ software and related other intellectual property are governed by CONSULTANT's standard End User License Agreement ("EULA") between CONSULTANT and the CITY attached hereto and incorporated as Exhibit E below.

EXHIBIT "B"

PAYMENT

SOFTWARE AS A SERVICE AGREEMENT

RECITALS

WHEREAS, the CITY requires "software as a service" ("Services" as further described herein) with respect to its needs;

WHEREAS, CONSULTANT has experience and expertise in the business of providing Services;

WHEREAS, CONSULTANT submitted a Statement of Work to Subscriber to perform such Services on behalf of the CITY;

WHEREAS, CONSULTANT has agreed to provide the Services to Subscriber, all on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and representations set forth in this Agreement, the parties hereby agree as follows:

1. Services: Under this Agreement, all Services to be performed by CONSULTANT are defined in the Exhibit A above, incorporated herein by this reference.

2. Payment: In exchange for Services performed for the CITY by CONSULTANT, the CITY agrees to pay CONSULTANT the following over a five year service term:

30,000 Users; 5 Admin Portal Licenses – 25% Volume Discount and 35% Multi-Year Discount

5 Year Pricing Plan		
	Fee	Due
Annual Licensing Fee with 35% Discount Year 1	$17,550	Upon CONSULTANT's full completion of the deployment phase
Data Hosting Year 1	$1,560*	Upon CONSULTANT's full completion of the deployment phase
Annual Licensing Fee with 35% Discount Year 2	$17,550	Upon 1 year anniversary of signing following CITY's receipt of CONSULTANT's invoice
Data Hosting Year 2	$1,560*	Upon 1 year anniversary of signing following CITY's receipt of CONSULTANT's invoice

Annual Licensing Fee with 35% Discount Year 3	$17,550	Upon 2 year anniversary of signing following CITY's receipt of CONSULTANT's invoice
Data Hosting Year 3	$1,560*	Upon 2 year anniversary of signing following CITY's receipt of CONSULTANT's invoice
Annual Licensing Fee with 35% Discount Year 4	$17,550	Upon 3 year anniversary of signing following CITY's receipt of CONSULTANT's invoice
Data Hosting Year 4	$1,560*	Upon 3 year anniversary of signing following CITY's receipt of CONSULTANT's invoice
Annual Licensing Fee with 35% Discount Year 5	$17,550	Upon 4 year anniversary of signing following CITY's receipt of CONSULTANT's invoice
Data Hosting Year 5	$1,560*	Upon 4 year anniversary of signing following CITY's receipt of CONSULTANT's invoice
One-Time Implementation Fee	$10,000	Upon Go Live/Launch
TOTAL	$105,550	

*Hosting Fee predicated on no more than 1,000 total hosted users. Should the total number of hosted users exceed 1,000 at any time, the annual price for hosting services shall increase to $3,120 per year for the year the number of hosted users exceeds 1,000, and for all years remaining under this Agreement

3. Invoicing and Time for Payment: CONSULTANT shall send an invoice to the CITY for Services rendered as outlined in the foregoing 5 Year Pricing Plan. Each invoice will be delivered upon completion of each Milestone, as set out in the Statement of Work and any valid modifications thereof. CITY agrees to make all payments under this Agreement to CONSULTANT within thirty (30) business days after receipt of an invoice.

4. Conflicting Terms: In the event of any conflict between the terms of this Agreement and the terms of any other agreement, the terms of this Agreement shall prevail.

5. Any additional meetings or work required beyond that set forth in Exhibit "A" shall be mutually agreed to in writing by the CITY and CONSULTANT, and shall be billed on a time and materials basis.

6. The total contract price for services rendered by CONSULTANT under this Agreement for additional meetings or work shall be as specified below:

Personnel	Hourly Rate
Technical Lead	$75/Hour
Project Lead	$75/Hour

EXHIBIT "C"

GENERAL PROVISIONS

1) <u>INDEPENDENT CONSULTANT</u>. At all times during the term of this Agreement, CONSULTANT shall be an independent contractor and shall not be an employee of CITY. CITY shall have the right to control CONSULTANT only insofar as the results of CONSULTANT's services rendered pursuant to this Agreement; however, CITY shall not have the right to control the means by which CONSULTANT accomplishes services rendered pursuant to this Agreement.

2) <u>LICENSES; PERMITS; ETC.</u> CONSULTANT represents and warrants to CITY that CONSULTANT has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONSULTANT to practice CONSULTANT's profession. CONSULTANT represents and warrants to CITY that CONSULTANT shall, at its sole cost and expense, keep in effect at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required for CONSULTANT to practice his profession.

3) <u>TIME</u>. CONSULTANT shall devote such services pursuant to this Agreement as may be reasonably necessary for satisfactory performance of CONSULTANT's obligations pursuant to this Agreement. CONSULTANT shall adhere to the Schedule of Activities as described in their Executive Summary.

4) <u>CONSULTANT NOT AN AGENT.</u> Except as CITY may specify in writing, CONSULTANT shall have no authority, express or implied, to act on behalf of CITY in any capacity whatsoever as an agent. CONSULTANT shall have no authority, express or implied, pursuant to this Agreement, to bind CITY to any obligation whatsoever.

5) <u>ASSIGNMENT PROHIBITED.</u> No party to this Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no effect.

6) <u>PERSONNEL.</u> CONSULTANT shall assign only competent personnel to perform services pursuant to this Agreement. In the event that CITY, in its sole discretion, at anytime during the term of this Agreement, desires the removal of any person or persons assigned by CONSULTANT to perform services pursuant to this Agreement, CONSULTANT shall remove any such person immediately upon receiving notice from CITY of the desire of CITY for the removal of such person or persons.

7) <u>STANDARD OF PERFORMANCE.</u> CONSULTANT shall perform all services required pursuant to this Agreement. Services shall be performed in the manner and according to the standards observed by a competent practitioner of the profession in which CONSULTANT is engaged in the geographical area in which CONSULTANT practices his profession. All products which CONSULTANT delivers to CITY pursuant to this Agreement shall be prepared in a workmanlike manner, and conform to the standards of quality normally observed by a person practicing in CONSULTANT's profession. CITY shall be the sole judge as to whether the product of the CONSULTANT is satisfactory.

8) <u>CANCELLATION OF AGREEMENT.</u> This Agreement may be canceled at any time by the CITY at its discretion upon written notification to CONSULTANT. CONSULTANT is entitled to receive full payment for all services performed and all costs incurred up to and including the date of receipt of written notice to cease work on the project. CONSULTANT shall be entitled to no further compensation for work performed after the date of receipt of written notice to cease work. All completed and incomplete products up to the date of receipt of written notice to cease work shall become the property of CITY.

9) <u>PRODUCTS OF CONSULTING.</u> All deliverables of the implementation services provided by the CONSULTANT under this Agreement shall be the property of the CITY. The use of software and related services shall be governed by CONSULTANT's standard End User License Agreement, attached hereto and incorporated as Exhibit E.

10) <u>INDEMNIFY AND HOLD HARMLESS.</u>

a) CONSULTANT shall indemnify, defend, and hold harmless the CITY, its officers, agents, employees and volunteers from all claims, suits, or actions of every name, kind and description, brought forth on account of injuries to or death of any person or damage to property arising from or connected with the willful misconduct, negligent acts, errors or omissions, ultra-hazardous activities, activities giving rise to strict liability, or defects in design by CONSULTANT or any person directly or indirectly employed by or acting as agent for CONSULTANT in the performance of this Agreement, including the concurrent or successive passive negligence of the CITY, its officers, agents, employees or volunteers.

It is understood that the duty of CONSULTANT to indemnify and hold harmless includes the duty to defend as set forth in Section 2778 of the California Civil Code.

Acceptance of insurance certificates and endorsements required under this Agreement does not relieve CONSULTANT from liability under this indemnification and hold harmless clause. This indemnification and hold harmless clause shall apply whether or not such insurance policies are determined to be applicable to any such damages or claims for damages.

CONSULTANT's responsibility for such defense and indemnity shall survive termination or completion of this agreement for the full period of time allowed by law.

11) <u>PROHIBITED INTERESTS</u>. No employee of the CITY shall have any direct financial interest in this agreement. This agreement shall be voidable at the option of the CITY if this provision is violated.

12) <u>LOCAL EMPLOYMENT POLICY</u>. The CITY desires wherever possible, to hire qualified local residents to work on city projects. Local resident is defined as a person who resides in Solano County. The CITY encourages an active affirmative action program on the part of its contractors, consultants, and developers. When local projects require, subcontractors, contractors, consultants and developers will solicit proposals from qualified local firms where possible.

As a way of responding to the provisions of the Davis-Bacon Act and this program, contractor, consultants, and developers will be asked, to provide no more frequently than monthly, a report which lists the employee's name, job class, hours worked, salary paid, city of residence, and ethnic origin.

13)<u>CONSULTANT NOT A PUBLIC OFFICIAL</u>. CONSULTANT is not a "public official" for purposes of Government Code §§ 87200 et seq. CONSULTANT conducts research and arrives at his or her conclusions, advice, recommendation, or counsel independent of the control and direction of the CITY or any CITY official, other than normal contract monitoring. In addition, CONSULTANT possesses no authority with respect to any CITY decision beyond these conclusions, advice, recommendation, or counsel.

14)<u>EMPLOYMENT   DEVELOPMENT   DEPARTMENT   REPORTING REQUIREMENTS</u>. When the CITY executes an agreement for or makes payment to CONSULTANT in the amount of $600 (six hundred dollars) or more in any one calendar year, CONSULTANT shall provide the following information to CITY to comply with Employment Development Department (EDD) reporting requirements:

a) Whether CONSULTANT is doing business as a sole proprietorship, partnership, limited liability partnership, corporation, limited liability corporation, non-profit corporation or other form of organization.

b) If CONSULTANT is doing business as a sole proprietorship, CONSULTANT shall provide the full name, address and social security number or federal tax identification number of the sole proprietor.

c) If CONSULTANT is doing business as other than a sole proprietorship, CONSULTANT shall provide federal tax identification number.

INSURANCE REQUIREMENTS

CONSULTANT shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the CONSULTANT, its agents, representatives, or employees.

1) MINIMUM SCOPE AND LIMITS OF INSURANCE

   a) Commercial General Liability coverage (occurrence Form CG 00 01) with minimum limits of $1,000,000 per occurrence for bodily injury, personal injury, products and completed operations, and property damage. If Commercial General Liability or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.

   b) Automobile Liability coverage (Form CA 00 01 with Code 1 – any auto) with minimum limits of $1,000,000 per accident for bodily injury and property damage.

   c) Workers' Compensation insurance as required by the State of California and Employers' Liability insurance, each in the amount of $1,000,000 per accident for bodily injury or disease.

2) INDUSTRY SPECIFIC COVERAGES

If checked below, the following insurance is also required.

[X] Professional Liability Insurance / Errors and Omissions Liability in the minimum amount of $1,000,000 per occurrence.

[ ] Pollution Liability Insurance in the minimum amount of $1,000,000 per occurrence

[ ] Garage Keepers Insurance in the minimum amount of $1,000,000 per occurrence

[ ] Fidelity / Crime / Dishonesty Bond in the minimum amount of $_____

[ ] MCS-90 Endorsement to Business Automobile insurance for transportation of hazardous materials and pollutants

[ ] Builder's Risk / Course of Construction Insurance in the minimum amount of $_____.

3) INSURANCE PROVISIONS
   a) DEDUCTIBLES AND SELF-INSURED RETENTIONS. Any deductibles or self-

insured retentions must be declared to and approved by the CITY. At the option of the CITY, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the CITY, its officers, officials, employees and volunteers; or the CONSULTANT shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

b) The general and automobile liability policies (and if applicable, pollution liability, garage keepers liability and builder's risk policies) are to contain, or be endorsed to contain, the following provisions:

i) The CITY, its officers, officials, employees and volunteers are to be covered as insureds as respects: liability arising out of work or operations performed by or on behalf of the CONSULTANT; products and completed operations of the CONSULTANT; premises owned, occupied or used by the CONSULTANT; and automobiles owned, leased, hired or borrowed by the CONSULTANT. The coverage shall contain no special limitations on the scope of protection afforded to the CITY, its officers, officials, employees or volunteers.

ii) For any claims related to this project, the CONSULTANT's insurance coverage shall be primary insurance as respects the CITY, its officers, officials, employees and volunteers. Any insurance or self-insured maintained by the CITY, its officers, officials, employees or volunteers shall be excess of the CONSULTANT's insurance and shall not contribute with it.

iii) Any failure to comply with reporting or other provisions of the policies including breaches of warranties shall not affect coverage provided to the CITY, its officers, officials, employees or volunteers.

iv) The CONSULTANT's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

v) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the CITY.

vi) The policy limits of coverage shall be made available to the full limits of the policy. The minimum limits stated above shall not serve to reduce the CONSULTANT's policy limits of coverage. Therefore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this agreement, or (2) the broader coverage and maximum limits of coverage of any insurance policy or proceeds available to the named insured, whichever is greater.

c) ACCEPTABILITY OF INSURER. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the CITY.

d) VERIFICATION OF COVERAGE. CONSULTANT shall furnish the CITY with original endorsements effecting coverage required by this Exhibit D. The endorsements are

to be signed by a person authorized by that insurer to bind coverage on its behalf. The endorsements are to be on forms provided by the CITY or on forms equivalent to CG 20 10 11 85 subject to CITY approval. All insurance certificates and endorsements are to be received and approved by the CITY before work commences. At the request of the CITY, CONSULTANT shall provide complete, certified copies of all required insurance policies, including endorsements effecting the coverage required by these specifications.

    e) <u>SUB-CONTRACTORS</u>. CONSULTANT shall require all subcontractors to procure and maintain insurance policies subject to the requirements of Exhibit D. Failure of CONSULTANT to verify existence of sub-contractor's insurance shall not relieve CONSULTANT from any claim arising from sub-contractors work on behalf of CONSULTANT.

EXHIBIT "E"
END USER LICENSE AGREEMENT ("EULA")

This End User License Agreement ("EULA") is a binding legal agreement between the City of Fairfield (the "CITY"), and Smart Utility Systems, LLC ("CONSULTANT"). By downloading, installing, or using this application(s) for Android, Windows, iOS or other mobile or desktop platform ("Software"), as applicable and identified in the Statement of Work or other relevant document or agreement ("Service Agreement"), CITY agrees to be bound by the terms of this EULA. If CITY does not agree to the EULA, it may not download, install, or use the Software. The Software is provided to the CITY under this EULA solely for its use and the use of its utility customers, field workers, or both. The CITY agrees that installation or use of the Software signifies that the CITY has read, understood, and agrees to be bound by the EULA.

1. **License.** CONSULTANT grants CITY, subject to the terms and conditions of this EULA and the Service Agreement, non-sublicensable (except where otherwise permitted), non-exclusive, non-transferable license to make the Software available to the CITY's utility users and/or employees up to the number of authorized users on the platforms and configurations specified in the relevant invoice or Service Agreement. For desktop or web-based users, an Authorized User is one: (a) for whom the applicable license fees have been paid, and (b) who are properly and uniquely identified as users of the Software, and, (c) who are properly authorized to install and/or use the functionality in the Software. For mobile or core-based users, an Authorized User is one (a) for whom the applicable license fees have been paid and (b) who is properly authorized to install and/or use the Software. The CITY may use the Software on the platforms and configurations specified in the Scope of Service (Exhibit A above), solely for internal development and testing in connection with the CITY's licensed Software, or for backup purposes ("Non-Production Environment"). The CITY's installation or use of a copy of the Software in a Non-Production Environment is limited to the same number of Authorized Users and/or number of cores as provided in the Service Agreement. The CITY's use of the Software in a Non-Production Environment may be concurrent with its use of the licensed Software. Such use is conditioned on the CITY having an authorized license for the Software. As it relates to the desktop Software, the CITY's commercial use of the Software is considered use within a production environment and the CITY is entitled to one (1) production environment for each Software license the CITY purchases under this Agreement. The CITY's use of the Software in a Production Environment allows for a single Production Environment per license regardless of the fact that a single Production Environment may consume all the cores identified on the CITY's invoice or at the time of purchase.

2. **Third Parties.** The CITY may permit third parties ("Permitted Sublicensees") to access the Software as authorized users from its servers and/or equipment on the CITY's behalf, provided that, (a) the CITY shall remain responsible for the acts and omissions of such Permitted Sublicensees as if such were the CITY's acts and omissions, (b) such use is only for the CITY's benefit, and (c) upon request by CONSULTANT the CITY will identify each such Permitted Sublicensee. Any use of the Software by Permitted Sublicensees shall be within the usage restrictions in the applicable Invoice or specified at the time of purchase. Notwithstanding the prohibition against sub-licensing in Section 2, the CITY may be permitted to provide access or use of the Server Software to any third parties for such third party's own benefit ("Third Party Sublicensees"), provided that (a) the CITY require the Third Party Sublicensees to agree to terms at least as restrictive as than those contained in this Agreement ("Sublicensee Terms"), (b) the Sublicensee Terms will provide that CONSULTANT is a third-party beneficiary of such Sublicensee Terms and be as protective of CONSULTANT as this Agreement; and, (c) the CITY shall not sell, sublicense, rent, or lease the Server Software to a Third Party Sublicensee for time sharing, hosting, service provider or like purposes. Any use of the Server Software by Third Party Sublicensees shall be within the usage restrictions in the applicable Invoice or specified at the time of purchase. The warranty in Section 10 and the Support and Maintenance Services in Section 4 shall not apply to any use of the Server Software by Third Party Sublicensees.

3. **Third Party Content.** The software may contain maps or other third party content. The Software license granted under this Agreement includes the right to use CONSULTANT-provided third party content solely with the Software for which CONSULTANT has granted a license to the CITY under this Agreement. For the avoidance of doubt, the CITY may not sell, license, or distribute such copies by themselves or as part of any collection or product. All third party content is provided "AS IS," and other than the extension of any applicable manufacturer warranty as discussed in section 10(b) of this agreement, CONSULTANT makes no other warranties of any kind with respect to such third-party content.

4. **Delivery, Acceptance Payment, and Maintenance.** All Software shall be delivered by electronic means unless otherwise specified on the applicable invoice or Service Agreement or at the time of purchase. The Software shall be deemed delivered when it is made available for download by the CITY ("Delivery"). Software shall be deemed accepted ten (10) business days after completed delivery unless the CITY notifies CONSULTANT in writing of a material nonconformity in the Software. The CITY shall pay all fees associated with the Software licensed and any services purchased hereunder as set forth in the applicable invoice or Service Agreement at the time of purchase. Unless otherwise stated, all payments shall be made in the currency noted on the applicable ordering document within thirty (30) days of the Acceptance of the Software by the CITY. The CITY shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the net income of CONSULTANT). Subject

to the terms and conditions of this EULA and the applicable Service Agreement, support and maintenance services may be included or purchased as set forth in CONSULTANT's Maintenance and Technical Support Agreement.

5. **Title.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, CONSULTANT has and will retain all rights, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the software, code, and all copies, modifications and derivative works thereof (including any changes which incorporate any of the CITY's ideas, feedback or suggestions). CITY acknowledges that it is obtaining only a limited license right to the software and that no ownership rights are being conveyed to the CITY under this Agreement or otherwise.

6. **Restrictions.** The CITY understands and agrees that it shall only use the Software in a manner that complies with any and all applicable laws in the jurisdictions in which it uses the Software. The CITY's use shall be in accordance with applicable restrictions concerning privacy and intellectual property rights. To the extent permitted by relevant California or federal law, the CITY shall not (and shall not allow any third party to): decompile, alter, translate, disassemble, or otherwise reverse engineer the Software or Media Elements or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software or Media Elements by any means whatsoever; Create derivative works based on the Software; Use the Software for any purpose other than as described herein; Copy or reproduce the Software except as described in this EULA; Sell, assign, license, disclose, distribute or otherwise transfer or make available the Software or any copies of the Software in any form to any third parties or otherwise unauthorized individuals; Remove or alter any proprietary notices or marks on the Software; Use the Software to develop a product which is competitive with any CONSULTANT product offerings; use the Software to develop a product that converts any CONSULTANT file format to an alternative report file format used by any general-purpose report writing, data analysis or report delivery product that is not the property of CONSULTANT.

7. **Personal Information and Privacy.** CONSULTANT may ask the CITY or its customers to provide certain information while using the Software. All personal information provided to CONSULTANT will be governed by CONSULTANT's Privacy Policy, which is available upon request. By choosing to use the Software and/or SUS's services, the CITY indicates its understanding and acceptance of this EULA and CONSULTANT's Privacy Policy. The CITY understands and agrees that SUS may disclose information if required to do so by law or in the belief that such disclosure is reasonably necessary to comply with legal process, enforce the terms of this EULA, or protect the rights, property, or safety of CONSULTANT, its users, or the public.

8. **Right to Terminate or Modify Software.** CONSULTANT may modify the Software with notice to the CITY in writing of any material change the Software's functionality or appearance. CONSULTANT may terminate the CITY's use of the Software if the CITY fails to adhere to the terms of this EULA and any other applicable documentation.

9. **Term of Agreement.** This Agreement is effective as of the date on the Consultant Service Agreement and expires at such time as all license and service subscriptions hereunder have expired in accordance with their own terms (the "Term"). For clarification, the term of the CITY's license under this Agreement may be perpetual, or designated as a fixed-term license in the Service Agreement or by an authorized partner, and shall be specified at the CITY's time of purchase. Either party may terminate this Agreement (including all related invoices) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach. Either party may terminate this Agreement in the event that the other party ceases business operations or enters into any bankruptcy, insolvency, receivership or like proceeding not dismissed within thirty (30) days, or assigns it assets for the benefit of creditors.

The CITY warrants that it has funds available to pay all amounts due hereunder through the end of its current appropriation period and warrants further that it will request funds to make payments in each appropriation period from now until the end of the Agreement term. In the event that: (i) funds are not appropriated and are not otherwise available to the CITY for any fiscal period for the acquisition of Services and software which are the same as or similar to those for which the software provided or installed under the Agreement was acquired, (ii) such non-appropriation has not resulted from the CITY's act or failure to act, and (iii) the CITY has exhausted all funds legally available for payment under the Agreement and no other legal procedure shall exist whereby payment thereunder can be made to CONSULTANT, then the CITY may terminate this Agreement to be effective as of the last day for which funds were appropriated or otherwise made available by giving CONSULTANT thirty (30) days prior written notice of termination citing the unavailability of funds to continue. Notwithstanding this paragraph, the CITY shall remain responsible for payment to CONSULTANT for all Services performed, as well as for all Products delivered and accepted.

Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. Termination: Upon any expiration or termination of this Agreement, the CITY shall cease any and all use of any Software and destroy all copies thereof and so certify to CONSULTANT in writing. CONSULTANT may audit the copies of the Software purchased by the CITY to assure compliance with this Agreement. If such audit discloses that the CITY has not ceased using the Software, then the CITY shall be liable for the

reasonable costs of the audit in addition to any other fees, damages and penalties CONSULTANT may be entitled to under this Agreement and applicable law.

10. **Limited Warranty and Disclaimer.**

Limited Software Warranty.

a. CONSULTANT warrants to the CITY that the Software shall operate in substantive conformity with the relevant documents or agreements for a warranty period of one (1) year from the date of purchase. CONSULTANT does not warrant that the CITY's use of the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. CONSULTANT's sole liability (and the CITY's exclusive remedy) for any breach of this warranty shall be either, at CONSULTANT's option, (a) repair or replacement of the licensed software, or (b) return of the applicable fee paid by the CITY within the twelve (12) months preceding notice by the CITY to CONSULTANT of any failure to meet CONSULTANT's limited warranty for any software or service that does not meet such warranty. If, however, CONSULTANT elects to repair the subject software, CONSULTANT will administer repairs under commercially reasonable standards (including, but not limited to, commercially reasonable timeframes for repair) and warrant that the repairs will result in substantial performance of the software upon repair. CONSULTANT shall have no obligation with respect to a warranty claim unless notified of such claim within the Warranty Period. OTHER THAN AS PREVIOUSLY STATED THIS A LIMITED WARRANTY AND, EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE SOFTWARE AND ALL SERVICES ARE PROVIDED "AS IS." NEITHER CONSULTANT NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. THE CITY MAY HAVE OTHER STATUTORY RIGHTS. HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE LIMITED WARRANTY PERIOD. The above warranty shall not apply: (i) if the Software is used with hardware or Software not specified in the Service Agreement; (ii) if any modifications are made to the Software by the CITY or a third party; or (iii) to defects in the Software due to accident or improper use by the CITY.

Third Party Software Warranty.

b. CONSULTANT will extend to the CITY the manufacturer's warranty, if any, for third-party software delivered by CONSULTANT to the CITY under this Agreement. The CITY acknowledges and agrees that CONSULTANT shall not be responsible for separately warranting or supporting third-party software and that the CITY must contract directly with the manufacturer of such third-party software for any support or maintenance.

11. **Limitation of Remedies and Damages.** BUT FOR: (1) THE INDEMNIFY AND HOLD HARMLESS OBLIGATIONS UNDER SECTION 10 OF EXHIBIT C, GENERAL PROVISIONS; (2) INDEMNIFICATION OBLIGATIONS UNDER SECTION 12 OF THIS EULA, (3) EITHER PARTY'S BREACH OF SECTION 14 OF THIS EULA, OR (4) EITHER PARTY'S BREACH OF SECTION 6, NEITHER PARTY SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS OR COSTS OF COVER), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. BUT FOR: (1) THE INDEMNIFY AND HOLD HARMLESS OBLIGATIONS UNDER SECTION 10 OF EXHIBIT C, GENERAL PROVISIONS; (2) INDEMNIFICATION OBLIGATIONS UNDER SECTION 12 OF THIS UELA, (3) EITHER PARTY'S BREACH OF SECTION 14 OF THIS UELA, OR (4) EITHER PARTY'S BREACH OF SECTION 6 OF THIS EULA, BOTH PARTIES' ENTIRE LIABILITY UNDER THIS AGREEMENT SHALL NOT EXCEED THE SOFTWARE LICENSE FEES PAID BY THE CITY FOR THE SOFTWARE OR THE FEES PAID OR OWED BY THE CITY FOR THE SERVICE DIRECTLY CAUSING THE DAMAGES, WHICHEVER FEE IS GREATER.

12. **Intellectual Property Indemnification:** CONSULTANT shall indemnify and hold the CITY harmless from and against any loss, damage, liability or expense on account of any claim(s) arising from any allegation that any software provided by SUS under this agreement (excluding third-party software) infringes any United States patent, copyright, or other proprietary right and shall defend any suit and dispose of any claim(s) or other proceeding, In the event that such software is, or in CONSULTANT's sole opinion is likely to be, enjoined or subject to a claim, CONSULTANT, at its option and expense, may (a) replace the Software with functionally equivalent non-infringing Software or (b) obtain a license for the CITY's continued use of the Software, or, if the foregoing alternatives are not reasonably available to CONSULTANT (c) terminate this Agreement and refund any sums prepaid for the unused Term, if any. Notwithstanding the above, CONSULTANT shall have no liability for any Claim which: (i) pertains to any Software that has been altered or modified without CONSULTANT's prior written approval; (ii) is based on use of the Software in conjunction with any item not provided by CONSULTANT, unless such use is shown to constitute the infringement when not used in conjunction with the item not provided by CONSULTANT; (iii) pertains to any unauthorized use of the Software; (iv) pertains to an unsupported release of the Software; or (v) pertains to any Open Source Software or other third party code provided with the Software. THIS SECTION SETS FORTH CONSULTANT's SOLE LIABILITY AND THE CITY'S SOLE AND EXCLUSIVE

REMEDY WITH RESPECT TO ANY CLAIM OF ALLEGED INFRINGEMENT OF ANY PATENTS, COPYRIGHTS, TRADEMARKS, OR OTHER INTELLECTUAL PROPERTY RIGHTS.

13. Export Restrictions This EULA is expressly made subject to any laws, regulations, orders or other restrictions on the export from the United States of America of the Software or information about such Software which may be imposed from time to time by the government of the United States of America. The CITY shall not export the Software or information about the Software without consent of CONSULTANT and compliance with such laws, regulations, orders or other restrictions.

14. Confidential Information Each party agrees that all code, inventions, know-how, business, technical and financial information it obtains ("Receiving Party") from the disclosing party ("Disclosing Party") constitute the confidential property of the Disclosing Party ("Confidential Information"), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be Confidential Information due to the nature of the information disclosed and the circumstances surrounding the disclosure. However, all of the CITY's data remains the property of the CITY and shall remain confidential regardless of whether pre-marked as confidential or in any other manner to indicate its confidential nature. Additionally, any Software, documentation or technical information provided by CONSULTANT (or its agents), and performance information relating to the Software, shall be deemed Confidential Information of CONSULTANT without any marking or further designation. Except as expressly authorized herein, the Receiving Party will hold in confidence and not use or disclose any Confidential Information. The Receiving Party's nondisclosure obligation shall not apply to information which the Receiving Party can document: (a) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (b) is or has become public knowledge through no fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; (d) is independently developed by employees of the Receiving Party who had no access to such information; or (e) is required to be disclosed pursuant to a regulation, law or court order (but only to the minimum extent required to comply with such regulation or order and with advance notice to the Disclosing Party). The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to appropriate equitable relief in addition to whatever other remedies it might have at law.

15. General. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect. This Agreement is governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof. The jurisdiction and venue for actions related to the subject matter hereof shall be California state and United States federal courts located in Solano County, California, and both parties hereby submit to the personal jurisdiction of such courts. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action. No supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. This Agreement is the complete and exclusive statement of the mutual understanding of the parties. Notwithstanding the foregoing, if the CITY has entered into a separate written license agreement signed by CONSULTANT for use of the Software, the terms and conditions of such other agreement shall prevail over any conflicting terms or conditions in this Agreement. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties in so far as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable cost.

EXHIBIT "F"
SOFTWARE MAINTENANCE AND TECHNICAL SUPPORT AGREEMENT

1. **General Terms.** The following expressions shall have the following meanings:
   a. *"CITY"* - the licensee that has purchased the license for the software.
   b. *"Services"* - the Services set out in this Software Maintenance and Technical Support Agreement.
   c. *"Software"* - each software program provided by Smart Utility Systems ("SUS"), including software in which SUS has sub-licensing rights, in executable, machine readable, object, printed or interpreted form, including any Software Protection Device and any documentation, modifications, improvements or updates supplied to the Licensee under any Quotation/Order. These include Smart Customer Mobile (SCM®), Smart Mobile Workforce (SMW), and Smart iQAnalytics (SiQ).
   d. *"Software License"* - the Software License supplied separately by SUS for their products including the Software through an End User License Agreement.

2. **Maintenance Term.** For a period of one (1) year from the date of delivery of the software (the "Maintenance Term"), CONSULTANT will supply the services described in Section 4 below ("Services") to the CITY with respect to the products for which SUS has granted a license to the CITY pursuant to a software end user license agreement (the "EULA") by and between CONSULTANT US and the CITY. The Maintenance Term shall be automatically renewed annually concurrent with the respective software License, where applicable. Notwithstanding the foregoing, the Maintenance Term shall only be renewed once the annual payment for the License Term is received by CONSULTANT. The renewed Maintenance Term shall commence upon the day following expiry of the expired Maintenance Term. To continue to receive Software Support the CITY must have in effect a valid Software Support Agreement.

3. **Fees.** All fees for maintenance and support services for cloud software defined herein are included in the annual license fee as set out in the EULA.

4. **Description of Maintenance and Technical Support Services**
   a. **During the Maintenance Term.** CONSULTANT will provide continuous improvement and innovation of licensed Software including Software Maintenance and Release Updates. CONSULTANT will provide 24 x 7 Support for mission critical issues (e.g., production downtime) directly caused by the CONSULTANT's software. CONSULTANT will use commercially reasonable efforts to assist the Licensee to resolve problems in its use of Software as described in Section 1. CONSULTANT makes no guarantee that it can, or will, solve any problems with respect to the Products presented by the CITY, and further disclaims any warranties above and beyond any limited warranties expressly made by CONSULTANT in the EULA. CONSULTANT will provide access on its web site to all Maintenance Updates of Products to the CITY as soon as practical in the ordinary course of business after commercial release of the same. Upon request, CONSULTANT will ship compact discs of the same to the CITY, a charge will apply. CONSULTANT will provide the CITY with Maintenance Updates, which, in CONSULTANT's sole determination, correct application problems that are reasonably likely to prevent substantially full utilization of Product(s). CONSULTANT will offer Services for the then current release of Product(s). CONSULTANT will also offer Services for the release of Product(s) immediately preceding the then-current release for not less than twelve (12) months from the date of such release. The CITY is responsible for its (i) hardware, (ii) operating systems, (iii) network setup, (iv) network maintenance, and (v) setup and use of any file access control systems. The CITY shall operate the current version of the Software. CONSULTANT will notify CITY of any necessary updates. Updates are available for downloading from www.smartusys.com. The CITY is responsible for ensuring that its personnel have sufficient training to attain and maintain competence in the operation of the products. The CITY shall provide its personnel access to, and require its personnel to review, the relevant online documentation (supplied with all Products) before calls are made to CONSULTANT Telephone Support. If CONSULTANT determines, in its sole discretion, in responding to a CITY request for Telephone Support, that the solution is provided in the Online Documentation, CONSULTANT may direct the CITY's personnel to the Online Documentation for the solution to the problem. In the event that the CITY pays for a Maintenance Term extension, CONSULTANT guarantees that Services will be supplied. After expiration, the CITY may resume the Services by payment of the then-current annual Maintenance and Support Fee plus the list price of the most recent Product update or upgrade released by CONSULTANT. The CITY agrees to designate two persons, one of whom shall be the primary and the other of whom shall be the backup respecting the CITY's communications with CONSULTANT relating to the Maintenance & Technical Support Services under this agreement. Such persons shall be the only person(s) who CONSULTANT is obligated to communicate with under this Software Maintenance and Technical Support Agreement. The CITY shall notify CONSULTANT by email of the names, email addresses and telephone numbers of the contact persons. CONSULTANT's email address for notification is support@smartusys.com.
   b. **Outside Scope of Services.** CONSULTANT will not be obligated to support activities related to the following:

(i) the improper use, operation or neglect of the Software; (ii) the modification of the Software or its merger (in whole or in part) with any other software; (iii) the failure by the CITY to implement recommendations in respect of the solutions and faults previously advised by CONSULTANT; (iv) any repair, adjustment, alteration or modification of the Software by any person other than CONSULTANT without CONSULTANT's prior written consent; (v) any breach by the CITY of its obligations under this Software Maintenance and Technical Support Agreement or the License; or (vi) the use of the Software for a purpose for which it was not designed. CONSULTANT may on the request of the CITY provide support notwithstanding that the support requested is not covered by the terms of this Software Maintenance and Technical Support Agreement. CONSULTANT shall in such circumstances be entitled to charge for such service at CONSULTANT's rates from time to time for work undertaken on a time and materials basis or fixed quote at the discretion of CONSULTANT.

5. **Termination.** CONSULTANT reserves the right to terminate this Software Maintenance and Technical Support Agreement if the CITY fails to comply with the Terms or any related agreement between CONSULTANT and the CITY. The CITY may terminate this Software Maintenance and Technical Support Agreement if CONSULTANT fails to comply with the Terms or any related agreement between CONSULTANT and the CITY provided that CONSULTANT has been given 30 days prior written notice during which CONSULTANT has failed to correct the breach where such breach is capable of remedy. This Software Maintenance and Technical Support Agreement shall be terminated with respect to any particular item of Software on the date any such Software License expires or the License is terminated for any reason.

6. **Relationship of Parties.** All work performed under the Software Maintenance and Technical Support Agreement by a party shall be performed as an independent contractor and not as an agent of the other. No persons furnished by either party shall be considered the other party's employees or agents, and each party shall be responsible for its own and its employees' compliance with all laws, rules, and regulations involving employment of labor, working conditions, payment of wages, and payment of taxes, such as unemployment, social security, and other payroll taxes, including applicable contributions from such persons when required by law.

7. **Notices.** All notices given under this Software Maintenance and Technical Support Agreement shall be effective upon receipt and shall be in writing and sent via first class U.S. Mail to the address of the other party set out in at the end of this Software Maintenance and Technical Support Agreement or to any replacement address of which the other party has been given written notice in accordance with this Section.

8. **Entire Agreement.** This Software Maintenance and Technical Support Agreement contains the entire agreement between the parties relating to the matters covered by it, superseding all other oral or written representations, understandings, proposals or other communications between the parties.

9. **Force Majeure.** Neither party shall be held responsible for any delay or failure in performance to the extent that such delay or failure is caused by fires, strikes, embargoes, explosions, earthquakes, floods, wars, water, the elements, labor disputes, government requirements, civil or military authorities, acts of God or by the public enemy, inability to secure raw materials or transportation, facilities, acts or omissions of carriers or suppliers, or other causes beyond its control whether or not similar to the foregoing.

10. **Assignment.** No party to this Software Maintenance and Technical Support Agreement may assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Software Maintenance and Technical Support Agreement shall be void and of no effect.

11. **Modifications.** This Software Maintenance and Technical Support Agreement may be supplemented, amended, or modified only by the mutual agreement of the Parties. No supplement, amendment, or modification of this Software Maintenance and Technical Support Agreement shall be binding unless it is in writing and signed by all parties.

12. **Severability.** In the event that any provision of this Software Maintenance and Technical Support Agreement is for any reason void or unenforceable in any respect, such provision shall be without effect to the extent of the voidability or unenforceability without affecting such provision in any other respect and without affecting any other provision or the general intent of the Agreement.

13. **Governing Law and Jurisdiction.** This Software Maintenance and Technical Support Agreement and any conflict or matter arising hereunder shall be governed by the laws of California, without regard to its conflict of law provisions. The parties hereby submit to the exclusive jurisdiction of the state and federal courts in the county of Solano, California.